

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

In Re Tyco International, Ltd.  
Multidistrict Litigation (MDL 1335)

MDL NO. 02-1335-PB  
SECURITIES ACTION

Scott Davis, et al.

Case No. 04-cv-1338-PB

v.

Dennis Kozlowski, et al.

O R D E R

Tyco International, Ltd. and PricewaterhouseCoopers, LLP have filed motions to dismiss Scott Davis's complaint. See Doc. Nos. 704, 707. The motions rely on the Supreme Court's recent opinion in Merrill Lynch, Pierce, Fenner & Smith v. Dabit, 126 S.Ct. 1503 (2006), in arguing that Davis's claims are preempted by the Securities Litigation Uniform Standards Act ("SLUSA"). Davis has not objected to either motion. Instead, he argues that I should remand the case to state court after dismissing the preempted claims. See Doc. No. 695-2. Alternatively, he "conditionally moves for leave to amend the complaint to limit the class to 50 persons and then remand it to state court." Id.

at 1. However, Davis has not presented the court with a proposed amended complaint as required by Local Rule 15.1(a).

I cannot grant Davis the relief he seeks. All of Davis's pending claims must be dismissed because they are preempted by SLUSA. Thus there are no active claims to be remanded. To be entitled to a remand, Davis must file a proposed amended complaint in accordance with our Local Rules that states claims that are not preempted by SLUSA. Because he has failed to do so, he is not entitled to have his case remanded to state court. Defendants' motions to dismiss (Doc. Nos. 704, 707) are granted. Plaintiff's motion to remand (Doc. No. 4, Case No. 04-cv-1338-PB) is denied. This order is entered without prejudice to Davis's right to file a new state court action asserting claims that are not preempted by SLUSA.

SO ORDERED.

/s/Paul Barbadoro  
Paul Barbadoro  
United States District Judge

July 14, 2006

cc: Counsel of Record